

1 The Honorable Richard A. Jones  
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11 UNITED STATES DISTRICT COURT FOR THE  
12 WESTERN DISTRICT OF WASHINGTON  
13 AT SEATTLE  
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15 UNITED STATES OF AMERICA,  
16 Plaintiff,  
17 v.  
18

19 EPHRAIM ROSENBERG,  
20 JOSEPH NILSEN,  
21 HADIS NUHANOVIC,  
22 KRISTEN LECCESE,  
23 Defendants.

NO. CR20-151RAJ

**STIPULATED MOTION TO  
CONTINUE TRIAL DATE AND  
PRETRIAL MOTIONS DEADLINE**

Noting date: October 13, 2021

24 The United States of America, by and through undersigned counsel, and the  
25 defendants Ephraim Rosenberg, Joseph Nilsen, Hadis Nuhanovic, and Kristen Leccece,  
26 by and through their attorneys, respectively, hereby file this *stipulated* motion for a  
27 continuance of the trial date and the pretrial motions deadline.

28 Trial in this matter currently is scheduled for January 10, 2022. Pretrial motions  
29 are due no later than November 4, 2021. For the reasons stated below, the parties  
30 stipulate and jointly request a continuance of the trial date until at least September 2022,  
31 with preference for October 25, 2022, or thereafter as the court has availability. The

1 parties likewise request that the pretrial motions deadline be extended to a date at least  
 2 three (3) months prior to the trial date, as described below.<sup>1</sup>

3 **I. DISCUSSION**

4 The aforementioned parties to this joint motion stipulate and agree as follows:

5 1. On September 16, 2020, a Grand Jury sitting in this District returned a  
 6 nine-count Indictment charging the defendants<sup>2</sup> with counts of Conspiracy to Commit  
 7 Violate the Travel Act and Computer Fraud and Abuse Act, in violation of 18 U.S.C.  
 8 § 371, Conspiracy to Commit Wire Fraud, in violation of 18 U.S.C. § 1349, and Wire  
 9 Fraud, in violation of 18 U.S.C. § 1343.

10 2. As set forth in records on file, incorporated herein, it is alleged that the  
 11 defendants participated in a fraud and bribery scheme targeting the Amazon Marketplace  
 12 and its users. The alleged conduct includes the payment of commercial bribes to Amazon  
 13 employees and/or contractors in order to gain unauthorized access to Amazon's computer  
 14 network, obtain beneficial outcomes for certain third-party seller accounts and product  
 15 listings, take harmful action against competitor seller accounts and product listings,  
 16 overcome barriers to the sale of restricted items (e.g., hazardous items and regulated  
 17 substances), and misappropriate internal Amazon data, which included information about  
 18 the operation of the Marketplace, about particular seller accounts, and Amazon  
 19 employees and customers.

20 3. On October 15 and 16, 2020, the above-captioned defendants made their  
 21 initial appearances in this District and were arraigned on the charges. Each entered pleas  
 22 of not guilty on all counts. Pursuant to a stipulated motion, trial was scheduled for  
 23 January 2022.

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 27 <sup>1</sup> The parties agree to confer regarding a more detailed briefing schedule, as needed or upon request.  
 28 <sup>2</sup> Co-defendant Rohit Kadimisetty entered a guilty plea, pursuant to a plea agreement, and is pending sentencing in  
 this matter. Co-defendant Nishad Kunju, a foreign national also charged in the Indictment, has not appeared in this  
 District and remains a fugitive on such charges.

1       4.     The above-captioned defendants were released subject to a bond pending  
 2 trial in this matter. The defendants reside outside of Washington State (in New York and  
 3 Georgia), and each has retained counsel.

4       5.     The parties, by and through counsel, stipulate to and jointly request a  
 5 continuance of the trial date and motions deadline as set forth herein. For multiple  
 6 reasons, including, but not limited to, the nature of the charges and prosecution, the  
 7 potential consequences, the possible questions of law and fact, the size, scope, and  
 8 technical nature of discovery, and the unusual complexity of the case, as well as the  
 9 Coronavirus Disease 2019 (COVID-19), including the Delta and other variants, and  
 10 health-related considerations, this continuance and extension of the pretrial motions  
 11 deadline are necessary and warranted.

12      6.     This case involves an immense amount of electronic discovery, well  
 13 beyond the typical matter. The investigation involved, among other things, searches of  
 14 more than 50 email and cloud storage accounts held at various online providers and the  
 15 seizure of more than 75 electronic devices, such as computers, tablets, phones, and  
 16 storage devices. In total, the government anticipates processing numerous terabytes of  
 17 electronic data in this matter. Given the large size, discovery productions are being  
 18 conduct on a rolling basis and conveyed to counsel for each defendant on external hard  
 19 drives. The United States has provided a substantial amount of data and additional  
 20 productions remain forthcoming.

21      7.     Moreover, the discovery contains certain personal information and sensitive  
 22 material beyond the typical matter. For instance, the electronic data contains a large  
 23 amount of protected information of alleged victims, personally identifiable information  
 24 (PII) of individuals, and internal and proprietary company records and information.  
 25 Accordingly, the parties required additional time to develop an appropriate discovery  
 26 plan and entered into a protective order governing the handling and storage of “Protected  
 27 Material,” which the Court approved. That protective order places limitations on the  
 28 review and dissemination of “Protected Material,” which, particularly given the current

1 concerns related to COVID-19, necessitates additional time for counsel and the  
2 defendants to review discovery and assess the case accordingly.

3       8. Undersigned defense counsel require additional time to review the  
4 evidence, with their clients, to conduct necessary follow-up investigation, and to retain  
5 and consult with experts, in order to provide effective representation. Further, defense  
6 counsel and the defendants require additional time to conduct factual and legal inquiries  
7 and to determine and consider viable strategies, to include, if appropriate, a possible  
8 negotiated resolution.

9       9. The parties further agree that this case involves serious allegations and  
10 charges, set forth above. For instance, the maximum penalty for wire fraud includes a  
11 term of imprisonment of up to 20 years. Moreover, the government indicates that it  
12 anticipates seeking additional charges in advance of any trial.

13       10. A trial in this case likely would span multiple weeks and include multiple  
14 hundreds of exhibits and the testimony of dozens of fact and expert witnesses. The  
15 United States anticipates the prosecution evidence would include representatives of  
16 Amazon and various online service providers, foreign witnesses, and expert testimony  
17 regarding multiple topics, including forensic analyses of computer and other electronic  
18 evidence, among other things. After reviewing discovery and conducting its own  
19 investigation, the defense likewise may present similar evidence at a trial. Further, the  
20 parties agree that such a trial, particularly with multiple defendants, would present  
21 challenges given the current health-related considerations related to COVID-19.

22       11. Given the circumstances, including the charges, the complexity of the case,  
23 the technical nature and size of discovery, the foreseeable trial evidence, and the potential  
24 consequences of conviction, a continuance is warranted and necessary in this case.

25       12. After consultation regarding respective conflicts, undersigned counsel and  
26 the parties are all available for trial in Seattle in early September and October 2022, and  
27 dates thereafter.

1       13. Undersigned counsel respectfully request a new trial date no earlier than  
2 September 2022. Certain defendants further have expressed a preference as follows:  
3 (a) Counsel for Defendant Rosenberg has emphasized a strong preference for a trial date  
4 of October 25, 2022, or any date thereafter, but, alternatively, also is available in the  
5 beginning of July and the beginning of September 2022;<sup>3</sup> and (b) Counsel for Defendant  
6 Nuhanovic has expressed a desire for a trial date in September or October 2022.

7       14. Undersigned defense counsel have discussed with their client the proposed  
8 continuance and her rights under the Speedy Trial Act, 18 U.S.C. § 3161 *et seq.* The  
9 defendant agrees with this course and has executed a waiver through October 2022.

10      15. The parties agree that (a) the failure to grant a continuance in this case will  
11 deny defense counsel reasonable time necessary for effective preparation for trial and  
12 other pretrial proceedings, taking into account the exercise of due diligence; (b) the ends  
13 of justice served by granting this continuance outweigh the interest of the public and the  
14 defendant in a speedy trial; and, (c) that failure to grant a continuance in this proceeding  
15 could create a risk of a miscarriage of justice; all within the meaning of 18 U.S.C.  
16 § 3161(h)(7).

17      16. The investigation also involves evidence located in a foreign country  
18 sought by an official request. Accordingly, a continuance is further warranted under 18  
19 U.S.C. § 3161(h)(8).

20       According to the court's in-court deputy, the week of October 25, 2022 currently  
21 is available, as is, alternatively, the week of August 29, 2022.

## 22           **II. CONCLUSION**

23       For the above stated reasons, the parties respectfully request that the Court find  
24 that the ends of justice served by continuing the trial date outweigh the best interests of  
25 the public and the defendant in a speedy trial.

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28      <sup>3</sup> Defendant Rosenberg and his counsel are unavailable from September 26 through October 18, 2022, in light of  
multiple religious holidays during that period.

1 It is further requested that the Court find, for the purpose of computing the time  
2 limitations imposed by the Speedy Trial Act, that the period of delay from the date of the  
3 filing of this motion until the new trial date is excludable pursuant to 18 U.S.C.  
4 § 3161(h)(7)(A) and (h)(7)(B)(i),(ii), and (iv).

5 Therefore, the parties ask that the trial date be continued until at least September  
6 2022, with a preference for October 25, 2022, or thereabouts as the court has availability.

7 The parties further ask that the deadline to file pretrial motions be reset to a date at  
8 least three (3) months prior to the rescheduled trial date. The parties further request and  
9 propose that any pretrial motion be noted for consideration on the third Friday thereafter,  
10 with responses thereto due no later than fourteen (14) days after filing of motions.

11 DATED this 13th day of October, 2021.

12 Respectfully submitted,

13 NICHOLAS W. BROWN  
14 United States Attorney

15 *s/ Steven Masada*  
16 *s/ Nicholas Manheim*  
17 STEVEN MASADA  
18 NICHOLAS MANHEIM  
19 Assistant United States Attorneys  
20 United States Attorney's Office

21 So Stipulated:

22 *s/ Jacob Laufer (by email auth.)*  
23 JACOB LAUFER, *pro hac vice*  
24 PETER OFFENBECHER  
25 Counsel for EPHRAIM ROSENBERG

26 *s/ Jess Johnson (by email auth.)*  
27 JESS JOHNSON, *pro hac vice*  
28 MICHAEL NANCE  
Counsel for HADIS NUHANOVIC

29 *s/ Justine Harris (by email auth.)*  
30 JUSTINE HARRIS, *pro hac vice*  
31 ROBERT FLENNAUGH  
32 Counsel for JOSEPH NILSEN

33 *s/ Kathleen Cassidy (by email auth.)*  
34 KATHLEEN CASSIDY, *pro hac vice*  
35 EMILY GAUSE  
36 Counsel for KRISTEN LECCESE